IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5011 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

DINESHBHAI P AMIN - Petitioner(s)
Versus
STATE OF GUJARAT THRO.SECRETARY & 4 - Respondent(s)

==========

Appearance :
MR TRILOK J PATEL for Petitioner(s) : 1,
MR MAULIK NANAVATI GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 5, 5.2.2,5.2.3
None for Respondent(s) : 5,

==========

CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 08/03/2007

ORAL JUDGMENT

1. Rule. Mr. Maulik Nanavati, learned A.G.P.

waives service of Rule for respondents No.1 to 4 and Mr. Hakim, learned advocate appears for respondents No.5/1 to 5/3 and waives notice of Rule. With the consent of the learned advocates for the parties, the matter is finally heard today.

2. The petitioner has preferred the petition for challenging the order passed by the City Survey Superintendent and its confirmation by the Deputy Collector, Collector and the State Government in Revision Jurisdiction, whereby the decision of the Corporation dated 8.7.1997 for recording of the family settlement and the entry based on the same is set aside.

3. Heard Mr.T.J.Patel, learned advocate for the petitioner, Mr. Maulik Nanavati, learned A.G.P. for the State authorities and Mr. Hakim, learned advocate for the private respondents.

4. Upon hearing the learned advocates appearing for both the sides, it appears that as

per the petitioner, in view of the family settlement, the application was made to the society and based on the said application, the society had passed Resolution. Thereafter on that basis, the application was made to the Corporation for recording the same in favour of the petitioner and the Corporation vide its order dated 8.7.1997, communicated the petitioner that same is transferred in the name of petitioner. However, it appears that thereafter, the private respondents challenged the said decision under the Land Revenue Code before the City Survey Superintendent and City Survey Superintendent canceled the said entry. Against it, appeal was preferred before the Deputy Collector, which came to be dismissed. Further Revision was preferred, which was also dismissed and ultimately, in the Revision preferred before the State Government, the orders of the authorities are confirmed and the Revision is also dismissed. Under these circumstances, the present petition.

5. It is not in dispute amongst the learned advocates appearing for both the sides that the

Regular Civil Suit No.1024 of 1997 is preferred by the private respondents for asserting the right in the property and the said suit is pending. Therefore, if the family settlement is arrived and the concerned local authority has entered same in the revenue record and if other side has preferred the Civil Suit for asserting right in the property, it was required for the revenue authority to relegate the parties to the proceedings of the Civil Suit instead of deciding inter se right of the parties. I would have recorded further reasons for such purpose, however, the learned advocates appearing for both the sides have not invited reasons since the suit is pending and any observation, which may be made by this Court, might prejudice the rights of either side in the suit proceedings, therefore, I find it proper not to record the reasons further.

6. However, suffice it to observe that the Revenue Authorities ought to have continued with the entry subject to clarification of the pendency of the Civil Suit No.1024 of 1997 and

the rights of the parties, ultimately, may be finalised as per the decision that may be taken by the Civil Court in the proper proceedings of the said Civil Suit. On the said aspect, the reference is also made in the decision of this Court in the case of **Jhaverbhai Savjibhai Patel thr. P.O.A. Holder Ashok J. Patel V. Kanchanben Nathubhai Patel & Ors.** reported in **2005 (3) GLR P.2733**.

7. In view of the above, the orders passed by the City Survey Superintendent and its confirmation by the Deputy Collector, Collector and State Government, are quashed and set aside with the direction that the entry recorded by the Municipal Corporation and communicated vide order dated 8.7.1997 in favour of the petitioner, shall continue to remain in revenue record with the clarification that the Civil Suit No.1024 of 1997 is preferred by Bakuleshbhai P. Amin, pursued by respondents No.5/1 to 5/3 for asserting right in property and rights of the parties shall be stand governed by the decision, which may be taken by

the Civil Court. The petition is partly allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts of the case, there shall no order as to costs.

(Jayant Patel, J.)

ynvyas